

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALI YOUSSEF ABDUL-HAK,

Defendant-Appellant.

UNPUBLISHED

June 17, 2008

No. 274543

Wayne Circuit Court

LC No. 06-006421-01

Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions on two counts of third-degree criminal sexual conduct (sexual penetration of a person at least 13 and under 16 years old), MCL 750.520(d)(1)(a). We affirm.

On appeal defendant raises two claims of ineffective assistance of counsel. In the trial court he moved for a new trial on the ground that he was denied the effective assistance of counsel and his motion was denied. This claim presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). While the trial court's factual findings are reviewed for clear error, questions of constitutional law are reviewed de novo. *Id.*

To establish a claim of ineffective assistance of counsel a defendant must show that: (1) counsel's performance was below an objective standard of reasonableness, (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, and (3) the resultant proceedings were fundamentally unfair or unreliable. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000); *People v Sabin (On Second Remand)*, 242 Mich App 656, 659; 620 NW2d 19 (2000). In showing that counsel's representation was deficient, a defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *People v Stanaway*, 446 Mich 643, 688; 521 NW2d 557 (1994).

First, defendant contends that his attorney was ineffective because he failed to secure the assistance of an interpreter at trial. We disagree. This Court has previously stated, "[w]henever it appears that a defendant is incapable of understanding the nature of, or of defending himself in, the proceedings against him because he is unable to understand the English language, an interpreter should be appointed in his behalf." *People v Atsilis*, 60 Mich App 738, 739; 231 NW2d 534 (1975). However, in *Atsilis*, this Court was not asked to determine whether the

failure to hire an interpreter constituted ineffective assistance of counsel. *Id.* Rather, the Court was discussing the trial judge's responsibility to appoint an interpreter where that trial judge is aware of the defendant's difficulty understanding English. *Id.*

Here, defendant has not established that his counsel's failure to have an interpreter appointed constituted ineffective assistance because defendant has not shown that he was prejudiced by this purported error. Defendant has neither detailed any instance in which his language skills affected the outcome of the trial, nor has he described how the outcome of his trial was tainted because of the lack of an interpreter at the defense table. There was overwhelming evidence presented at trial—including a taped conversation in which defendant made several incriminating statements, as well as the clear testimony of the victim—which established the elements of the charged offense. Furthermore, defendant's wife, Nesrine Abdul-Hak, assisted defendant during breaks in the trial. Only now does defendant claim this process was not sufficient. Even if defendant's counsel's performance in this regard was deficient, defendant has failed to show that, but for this error, there is a reasonable probability that he would have been found not guilty, and that the proceedings were fundamentally unfair or unreliable. See *Toma, supra*.

Second, defendant contends that his attorney was ineffective for failing to object to the testimony of the victim's brother. Defendant argues that he was prejudiced because the victim's brother's translation of a taped conversation represented the "tie-breaker" between two conflicting translations.¹ This characterization is inaccurate. While the prosecution's interpreter, May Saad, provided an interpretation in which defendant explicitly stated that he slept with the victim, defendant's own interpreter, Nada Ammoun, did not find such a blatant confession. However, Ammoun admitted she was unable to translate portions of the tape because they were incomprehensible. Ammoun testified that defendant stated that he did not "open" the victim, who was already a woman. That particular translation can be read in two distinct manners. First, the jury could have concluded that defendant did not sexually penetrate the victim. Alternatively, defendant may have simply been saying that he was not the first person to penetrate the victim, though not denying that he did in fact penetrate her. As such, the testimony of the victim's brother cannot be properly viewed as a "tie-breaker" as there was no clear disagreement between Ammoun and Saad.

Not only does defendant mischaracterize the alleged disagreement between the translators, he also exaggerates the importance of the taped conversation. The tape does not represent the sole piece of evidence incriminating defendant. Rather, the victim described in detail her multiple sexual encounters with defendant. Additionally, Mohammed Bazzi testified that defendant admitted his "mistake" while on the phone and offered to marry the victim. In focusing on the contents of the taped conversation, defendant ignores the importance of this

¹ While defendant asserts that this translation was inadmissible because the procedures of MRE 604 were not followed, the prosecution contends that because the victim's brother was a party to the taped conversation, he could translate the tape as a recorded recollection. Because this Court concludes that defendant was not prejudiced by the translation of the tape, it is not necessary to determine whether the translation at issue was admissible. See MCL 769.26.

additional evidence. But, again, even if defendant's counsel's performance in this regard was deficient, defendant has failed to show that, but for this error, there is a reasonable probability that he would have been found not guilty, and that the proceedings were fundamentally unfair or unreliable. See *Toma, supra*.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen